

California Regional Water Quality Control Board
North Coast Region

STAFF REPORT

**PROPOSED AMENDMENT TO THE WATER QUALITY CONTROL PLAN FOR THE
NORTH COAST REGION TO INCORPORATE AUTHORIZATION FOR
SCHEDULES OF COMPLIANCE IN NPDES PERMITS**

March 2004

I. SUMMARY

An amendment to the *Water Quality Control Plan for the North Coast Region* (Basin Plan) is proposed to authorize schedules of compliance in National Pollutant Discharge Elimination System (NPDES) permits issued by the California Regional Water Quality Control Board, North Coast Region (Regional Water Board). Schedules of compliance are a tool to obtain compliance with effluent limitations¹ and/or receiving water limitations,² that implement objectives³ or prohibitions adopted by the Regional Water Quality Control Board, State Water Resources Control Board or water quality criteria promulgated by the U.S. Environmental Protection Agency (U.S. EPA). Presently the Regional Water Board allows schedules of compliance for non-NPDES permits on a case-by-case basis. The Regional Water Board can currently allow schedules of compliance for California Toxics Rule (CTR) Criteria for priority pollutants, consistent with the State “Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California,” (CTR-SIP). However, a Basin Plan Amendment is necessary to empower the Regional Water Board to grant schedules of compliance for pollutants other than CTR priority pollutants in NPDES permits. With this Basin Plan amendment, we propose to provide the authority and process to incorporate schedules of compliance into NPDES permits.

Specifically, the proposed Basin Plan amendment would allow the Regional Water Board to authorize schedules of compliance for:⁴

¹ Effluent limitations are as defined in Section 502 (11) of the CWA, to mean, “any restriction established by a State or (U.S. EPA) Administrator on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged from point sources into navigable waters, the waters of the contiguous zone, or the ocean, including schedules of compliance.”

² Receiving water limitations are water quality objectives or criteria adopted as enforceable limits in NPDES and non-NPDES permits.

³ Water quality objectives are as defined by Porter Cologne Section 13050(h) and for the purpose of this Policy, include the Federal and State Antidegradation Policies as per the Water Quality Control Plan for the North Coast Region (p. 3-2.00). Water quality objectives can be either narrative or numeric.

⁴ This amendment is intended to supplement the conditions otherwise required by the State “Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California,” (CTR-SIP) and authorizing Federal Regulations (40 CFR Section 131.38), and therefore, does not supercede the SIP. The Regional Water Board will continue to consider and allow schedules of compliance per CTR criteria consistent with the CTR-SIP where applicable.

- A.** Existing dischargers (NPDES permittees) for effluent limitations and/or receiving water limitations specified to implement new, revised, or newly interpreted⁵ water quality objectives, criteria, or prohibitions.

Schedules of compliance in the NPDES permit shall be as short as feasible, but in no case exceed the following:

Up to five years from the date of permit issuance, re-issuance, or modification that establish effluent limitations and/or receiving water limitations specified to implement new, revised, or newly interpreted objectives, criteria, or prohibitions. The Regional Water Board may grant up to a five-year extension, but only where the conditions of the schedule of compliance have been fully met and sufficient progress toward achieving the objectives, criteria, or prohibitions have been documented.

In no case, shall a schedule of compliance for these dischargers exceed ten years from the effective date of the initial permit that established effluent and/or receiving water limitations specified to implement a new, revised, or newly interpreted objective, criterion, or prohibition.

- B.** Existing non-NPDES permittees that under new interpretation of law are newly required to comply with NPDES permitting requirements.

Schedules of compliance in new NPDES permits may be allowed only for effluent and/or receiving water limitations that are specified to implement objectives, criteria, or prohibitions adopted, revised, or re-interpreted after July 1, 1977, and that were not included in the non-NPDES permit.

Schedules of compliance in the NPDES permit shall be as short as feasible, but in no case exceed the following:

Up to five years from the date of issuance of the NPDES permit. The Regional Water Board may grant up to a five-year extension, but only where the conditions of the schedule of compliance have been fully met and sufficient progress toward achieving the objectives, criteria, or prohibitions has been documented.

In no case shall a schedule of compliance for these dischargers exceed ten years from the effective date of the initial NPDES permit.

⁵ New, revised, or newly interpreted water quality objectives, criteria, or prohibitions mean: adopted, revised, or re-interpreted after the effective date of this amendment (on the date approved by the U.S. Environmental Protection Agency (USEPA), pursuant to Federal Clean Water Act Section 303(c)(3)). Newly interpreted narrative water quality objectives, such as those specified in the Basin Plan for toxic substances, are interpreted by staff using a variety of scientific information to determine the numeric effluent limits necessary to implement these narrative objectives. Effluent limits that are derived based on such a new interpretation of narrative objectives could thus be considered for a permit-specified compliance schedule.

- C. TMDL-derived effluent and/or receiving water limitations that are specified to implement new, revised, or newly interpreted water quality objectives, criteria, or prohibitions that are adopted as a single permitting action. In this scenario, schedules of compliance shall require compliance in the shortest feasible period of time, but may extend beyond ten years from the date of permit issuance.

The term “schedule of compliance,” as defined in Section 502 (17) of the Clean Water Act, means “a schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with an effluent limitation, other limitation, prohibition, or standard.” Essentially, schedules of compliance are a mechanism that can be used to help dischargers come into compliance with new or revised effluent and/or receiving water limitations in a manner calculated to shift the focus from enforcement to achieving compliance, where immediate compliance is otherwise infeasible. The intent is to use this tool to improve performance and better protect water quality. Both the federal Clean Water Act and the Porter-Cologne Water Quality Control Act (California Water Code) recognize schedules of compliance as an integral tool for bringing dischargers into compliance with new or revised water quality objectives or prohibitions. This mechanism is presently authorized statewide for Waste Discharge Requirements (WDRs) (non-NPDES permits). Schedules of compliance are also authorized statewide in NPDES permits for CTR priority pollutants. However, for pollutants other than CTR priority pollutants, schedules of compliance in NPDES permits must be implemented via specific language authorizing schedules of compliance through an approved Basin Plan amendment. Several Regional Water Boards (including Regions 2, 4, 5, and 8) have already adopted schedule of compliance authorization language.

In order to expand the options available to the North Coast Regional Water Board in its permitting functions, staff recommends that a schedule of compliance amendment be adopted. Without this amendment, where an existing NPDES discharger cannot achieve immediate compliance with a new, revised, or newly interpreted objectives, criteria, or prohibitions, the Regional Water Board’s only course of action is to issue an enforcement order (i.e., Cease and Desist Order (CDO) or Time Schedule Order (TSO)), which provides interim timelines and actions including findings that the schedule of compliance with the new, revised, or newly interpreted objectives, criteria, or prohibitions will be achieved in the shortest feasible period of time. Once the schedule of compliance provision is in place, the Regional Water Board may choose to use a permit specified schedule of compliance along with other existing tools (e.g., enforcement actions) to assure compliance with permit requirements.

II. BACKGROUND AND RATIONALE

At the completion of the most recent Triennial Review in August 2001, the Regional Water Board adopted a Priority List of Issues to be addressed with Basin Plan amendments during the 2001 to 2004 time period. The issue of schedules of compliance and related subjects was identified as the fourth highest priority on this list. The first priority amendment has been adopted by the Regional Water Board, and the second and third priority amendments are currently underway.

NPDES permits are issued for point source waste discharges to waters of the United States pursuant to federal law (the Clean Water Act) and regulations. California is one of the states authorized to issue NPDES permits in lieu of direct regulation by the U.S. Environmental Protection Agency. The California Water Code (Sections 13370–13389) provides the statutory authority for the State and Regional Water Boards to implement the NPDES permit program, as well as the other requirements of the Clean Water Act and federal regulations and guidelines issued pursuant to the Act.

NPDES permits specify effluent limitations and, where appropriate, receiving water limitations, and other provisions that must be achieved to assure compliance with water quality objectives, criteria, or prohibitions for receiving waters. In some cases, immediate compliance with effluent limitations in NPDES permits may be infeasible. In particular, this may be the case if additional management measures must be implemented or physical controls (e.g., treatment facilities) constructed or upgraded in order to meet new, revised or newly interpreted water quality objectives, criteria, or prohibitions. Similarly, immediate compliance may be technically and/or economically infeasible for existing non-NPDES dischargers that, under new interpretation of law, are newly required to comply with NPDES permitting requirements. In such situations, it is also reasonable to consider a time schedule whereby compliance with the permit limitations is to be achieved.

For example, in the North Coast Region, we have occasionally issued Cease and Desist Orders. Adoption of a Cease and Desist Order results from a finding that the permittee is in violation of the permit. Such a finding generally has the effect of engendering a negative perception of the discharger, which may be unwarranted based on the circumstances. For example, where new effluent limits are established to meet new or revised water quality objectives, additional treatment facilities may be necessary and immediate compliance with the limits is, thus, simply infeasible.

In addition, and likely of more significance to the dischargers, the issuance of a Cease and Desist Order does not waive permit requirements. Amendments to California Water Code Section 13385 require that mandatory minimum penalties be assessed for permit violations. In addition, the issuance of a Cease and Desist Order may not bar third party citizen suits for permit violations, as authorized by Section 505 of the Clean Water Act. Simply put, under the present system, the Regional Water Board and dischargers may reach an agreement (with public review, comment and participation at a hearing) that is expressed in an enforcement order, only to have that agreement essentially voided by a third party. Further, the fact that the third party can sue the permit holder at any time may make it more difficult for that permittee to borrow money necessary to make improvements.

In contrast, inclusion of a schedule of compliance in the NPDES permit issued to dischargers, where such a schedule is necessary and justified, should reduce or eliminate the potential for adverse public perception. In addition, provided that the discharger acts in conformance with it, a permit-specified schedule of compliance would preclude the finding of permit violation and

thereby avoid mandatory minimum penalties and citizen suits. The Regional Water Board would still have the discretion to either issue an enforcement order (e.g., CDO, TSO), or issue a permit-specified schedule of compliance where appropriate. When immediate compliance with effluent limitations is feasible, but is not achieved, because the discharger has not acted responsibly, an enforcement order to compel compliance with the effluent limitation is appropriate. In some circumstances, however, as explained above, it may be infeasible for existing dischargers to comply immediately with effluent and/or receiving water limitations. In these cases, it is reasonable and appropriate to include a schedule for compliance in the NPDES permit, and in fact, the Clean Water Act recognizes that schedules of compliance are an appropriate tool to be used by permitting agencies when enabled. (See 40 C.F.R. Sections 122.47 and 131.38.)

It should be emphasized that issuance of permit-specified schedules of compliance would not preclude public input and participation. Consideration of the terms and conditions of an NPDES permit, including any proposed schedules of compliance, must include an opportunity for public review and comment and can only be adopted at a public hearing. The public would be able to comment not only on the propriety of granting a schedule of compliance, but also on the interim limits, the duration of the compliance, and whether the discharger made the appropriate showing that the schedule of compliance is as short as feasible taking into account the relevant factors. Further, the administrative and judicial remedies afforded under the Water Code remain fully available to those who object to the Regional Water Board's issuance of such a permit. In addition, this amendment will not limit the Regional Water Board's enforcement efforts. The Regional Water Board will still be able to enforce against a discharger if the interim limits and other conditions specified in the schedule of compliance are not being met. Moreover, because a schedule of compliance is part of an NPDES permit, citizens may still bring an enforcement action pursuant to Section 505 of the Clean Water Act if the discharger is not in compliance with a duly adopted schedule of compliance.

III. CONDITIONS FOR USE OF SCHEDULES OF COMPLIANCE IN NPDES PERMITS

There are several conditions that limit the use of schedules of compliance in NPDES permits.

First, all discharges of materials listed under federal regulations as priority toxic pollutants are governed by the California Toxics Rule (40 C.F.R. section 131.38) and schedules of compliance shall be limited to existing dischargers consistent with the State Board's "Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California (Phase 1 of the Inland Surface Waters Plan and the Enclosed Bays and Estuaries Plan)" (CTR-SIP). According to the CTR-SIP, an "existing discharger" means any discharger that is not a new discharger. An existing discharger includes an "increasing discharger" (i.e., an existing facility with treatment systems in place for its current discharge that is or will be expanding, upgrading, or modifying its existing permitted discharge after the effective date of this Policy)." This amendment limits schedules of compliance for existing point source discharges of CTR priority pollutants to be consistent with CTR SIP provisions.

Second, for all types of discharges, schedules of compliance can be included in NPDES permits only when specific authorization to do so is included in the state's water quality standards⁶ or the state regulations implementing the standards. That is, authorization must be included in the Basin Plan. This authorization can be provided in a number of ways, including: a) specific schedule of compliance authorization language added to the Basin Plan, as proposed here; b) compliance dates incorporated as part of the water quality standards; and c) compliance dates incorporated in the implementation chapters of the Basin Plan (e.g., in Total Maximum Daily Load (TMDL) Implementation Plans) or statewide plans (e.g., "Policy for Implementation of Toxic Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California"). In the absence of such explicit authorization, schedules of compliance can only be specified in non-Clean Water Act enforcement orders.

Third, schedules of compliance can only be included in NPDES permits for water quality-based effluent limits,⁷ and where appropriate, receiving water limitations, but not for technology-based limits. Because the Clean Water Act specifies specific requirements for technology-based standards, there is no flexibility for the Regional Water Board to grant a schedule of compliance to implement a technology-based approach for a discharger.

Fourth, schedules of compliance can only be included in NPDES permits for effluent limits based on water quality standards adopted, revised or newly interpreted after July 1, 1977. This condition is based on an order issued by the U.S. Environmental Protection Agency Administrator, *In the Matter of Star-Kist Caribe, Inc.* (NPDES Appeal No. 88-5). The *Star-Kist Caribe* order interprets Clean Water Act Section 301(b)(1)(C), which provides that NPDES permits must require compliance with water quality-based effluent limitations by July 1, 1977. The order states that immediate compliance must be achieved for any water quality standard that was adopted before July 1, 1977 and that has not been revised or reinterpreted after that date, making such water quality standards ineligible for schedules of compliance in NPDES permits. A schedule of compliance may be included in NPDES permits for water quality standards adopted, revised or reinterpreted after July 1, 1977 if the first two conditions for use of schedules of compliance are met.

IV. ANALYSES REQUIRED FOR INCLUSION OF SCHEDULES OF COMPLIANCE

The essential effect of including a schedule of compliance in a permit is to allow a discharger a specific period of time, that is as short as feasible and that includes appropriate interim limits, to achieve compliance with an effluent limitation and/or receiving water limitation that is established to implement water quality objectives, criteria, or prohibitions⁸. By including the

⁶ Water quality standards are comprised of beneficial uses, water quality objectives, criteria (narrative and numeric), and the State's Antidegradation Policy (Resolution 68-16).

⁷ Water quality-based effluent limits are those required when technology-based effluent limits fail to attain or maintain acceptable water quality as measured by water quality standards. Technology-based limits are derived from promulgated performance standards based on secondary treatment or best practicable control technology.

⁸ Alternatively, an enforcement order finds a discharger in violation of the permit for the duration of noncompliance, and subject to potential citizen enforcement actions.

schedule of compliance in the permit, the effective date of the limit is postponed; however, numeric interim limitations for the pollutant must be based on current treatment facility performance or on existing permit limitations, whichever is more stringent. If the existing permit limitations are more stringent, and the discharger is not in compliance with those limitations, the compliance under the existing permit must be addressed through appropriate enforcement action before the permit can be reissued, unless anti backsliding provisions are met. Pursuant to the California Environmental Quality Act (CEQA), the environmental effects that might result from postponing compliance must be assessed. So, in considering the schedule of compliance authorization language, the specific objectives, criteria, or prohibitions (and thus effluent and receiving water limitations) to which they apply must be identified, and CEQA analysis of postponing compliance with the objectives, criteria, or prohibitions must be conducted. To facilitate these analyses, a maximum time frame for any allowable schedule of compliance, except for TMDLs, has been specified in the authorization language.

It must be emphasized that the inclusion of Basin Plan authorization language is not a commitment to grant a schedule of compliance in any individual permit. It only provides the Regional Water Board the flexibility to do so where it is appropriate and justified. Toward that end, when a schedule of compliance is proposed to be included in a specific NPDES permit, the applicant must submit certain information to the Regional Water Board, including the following items.

For an existing discharger:

- A written request, and demonstration, with supporting data and analysis, that it is technically and/or economically infeasible to achieve immediate compliance with newly adopted, revised or newly interpreted water quality objectives, criteria, or prohibitions.

For an existing non-NPDES discharger that, under new interpretation of law, is newly required to comply with NPDES permitting requirements:

- A written request and demonstration with supporting data and analysis that it is technically and/or economically infeasible to achieve immediate compliance with the new NPDES permitting requirements that are specified to implement objectives, criteria, or prohibitions adopted, revised, or reinterpreted after July 1, 1977, and which were not included in the non-NPDES permit.

For all applicants:

- Results of diligent efforts to quantify pollutant levels in the discharge and the sources of the pollutant in the waste stream.
- Documentation of source control efforts currently underway or completed, including compliance with any pollution prevention programs that have been established.
- A proposed schedule for additional source control measures or waste treatment.
- The highest discharge quality that is technically and economically feasible to achieve until final compliance is attained.

- A demonstration that the proposed schedule of compliance is as short as technically and economically feasible.
- Data demonstrating current treatment facility performance to compare against existing permit effluent limits, as necessary to determine which is the more stringent interim limit to apply if a schedule of compliance is granted.
- Additional information and analyses, to be determined by the Regional Water Board on a case-by-case basis.

These criteria are consistent with criteria established by the Legislature for TSOs (Water Code, Section 13385(j)(3)(C)), by the State Water Resources Control Board (State Water Board) for schedules of compliance under the CTR-SIP (CTR-SIP, Section 2.1), and the U.S. EPA for schedules of compliance under the CTR (40 C.F.R. Section 131.38(e)). The Regional Water Board will consider if issuance of a schedule of compliance is appropriate and will determine the amount of information and/or analyses needed on a case-by-case basis.

It should also be emphasized that consideration of an NPDES permit, and any schedules of compliance proposed for inclusion in that permit, takes place at a public hearing. Thus, the public has the opportunity to comment on permit provisions, including those that would affect compliance with effluent limitations and, thereby, with water quality objectives, criteria, or prohibitions.

V. ANALYSIS OF ALTERNATIVES

1. No action.

No schedule of compliance authorization language would be added to the Basin Plan. If the Regional Water Board does not revise the Basin Plan to explicitly allow for schedules of compliance in NPDES permits, such schedules cannot be included in NPDES permits (with certain exceptions⁹), even where it is infeasible for a discharger to achieve immediate compliance with effluent limits and/or receiving water limitations. The result of this alternative would be that dischargers would be in violation of their NPDES permits and subject to potential citizen enforcement action, even when the Regional Water Board finds that immediate compliance with water quality objectives, criteria, or prohibitions is infeasible.

2. Adopt language that allows schedules of compliance in NPDES permits for all post-1977 and revised pre-1977 water quality objectives, criteria, or prohibitions.

This would require an extensive review of all existing objectives, criteria, or prohibitions to determine which ones are “eligible,” that is, which were adopted post-1977, or were adopted prior to 1977 but have since been revised. Once the “eligible” objectives, criteria, or prohibitions

⁹ A schedule may be included where a schedule of compliance is adopted as part of a water quality standard or where the Basin Plan or statewide plan otherwise specifically authorizes a schedule (e.g., an implementation plan for a Total Maximum Daily Load; the “Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California”).

have been identified, detailed analyses would be needed to consider the potential adverse environmental effects of postponing compliance. Such an extensive effort does not appear to be appropriate or required from a practical standpoint as we would not propose to relax permit limits, only ensure that objectives, criteria, or prohibitions were met in a reasonable period of time. However, performing this task on a case-by-case basis, as needed, would be feasible as it would be required on an infrequent basis.

3. Adopt language that allows the Regional Water Board to authorize schedules of compliance for effluent limitations and, where appropriate, receiving water limitations.

This process could be utilized for existing NPDES dischargers for effluent and/or receiving water limitations specified to implement prohibitions, objectives, or criteria (numeric or narrative) that are adopted, revised, or newly interpreted after the effective date of this Basin Plan amendment, including TMDLs adopted as a single permitting action. This process could also be used for existing non-NPDES dischargers that under new interpretation of law, are newly required to comply with NPDES permitting requirements.

The proposal would allow flexibility for the Regional Water Board to incorporate the schedule of compliance into the federal NPDES permit, as opposed to adopting a time frame for compliance in a stand alone, State law enforcement document. Future proposed changes to water quality objectives, criteria, or prohibitions would take into account the potential that a schedule of compliance could be specified in an NPDES permit, pursuant to the proposed Basin Plan authorization amendment, if approved.

It should be noted again that there is no commitment by the Regional Water Board to incorporate such schedules in NPDES permits. The inclusion of a schedule of compliance in a permit would be considered on a case-by-case basis, taking into account the documentation submitted by the discharger to demonstrate that the schedule of compliance is justified and as short as feasible.

VI. RECOMMENDED ALTERNATIVE (3)

Staff recommends that the Regional Water Board adopt language that allows schedules of compliance for:

- A.** Existing dischargers (NPDES permittees) for effluent limitations and, as applicable, receiving water limitations specified to implement new, revised, or newly interpreted water quality objectives, criteria, or prohibitions.

Schedules of compliance in the NPDES permit shall be as short as feasible, but in no case exceed the following:

Up to five years from the date of permit issuance, re-issuance, or modification that establish effluent limitations and/or receiving water limitations specified to implement new, revised, or newly interpreted objectives, criteria, or prohibitions. The Regional Water Board may grant

up to a five-year extension, but only where the conditions of the schedule of compliance have been fully met and sufficient progress toward achieving the objectives, criteria, or prohibitions have been documented.

In no case, shall a schedule of compliance for these dischargers exceed ten years from the effective date of the initial permit that established effluent and/or receiving water limitations specified to implement a new, revised, or newly interpreted objective, criterion, or prohibition.

- B.** Existing non-NPDES permittees that under new interpretation of law are newly required to comply with NPDES permitting requirements.

Schedules of compliance in new NPDES permits may be allowed only for effluent and/or receiving water limitations that are specified to implement objectives, criteria, and prohibitions adopted, revised, or reinterpreted after July 1, 1977, and that were not included in the new NPDES permit.

Schedules of compliance in the new NPDES permit shall be as short as feasible, but in no case exceed the following:

Up to five years from the date of issuance of the NPDES permit. The Regional Water Board may grant up to a five year extension, but only where the conditions of the schedule of compliance have been fully met and sufficient progress toward achieving the objectives, criteria, or prohibitions has been documented.

In no case shall a schedule of compliance for these dischargers exceed ten years from the effective date of the initial NPDES permit.

- C.** TMDLs derived effluent and/or receiving water limitations that are specified to implement new, revised, or newly interpreted water quality objectives, criteria, or prohibitions that are adopted as a single permitting action. In this scenario, schedules of compliance shall require compliance in the shortest feasible period of time, but may extend beyond ten years from the date of permit issuance.

This alternative allows the Regional Water Board two appropriate ways of addressing the inability of an existing discharger to achieve immediate compliance with effluent and/or receiving water limitations: 1) by issuing a TSO; or 2) by incorporating a schedule of compliance in a NPDES or non-NPDES permit. These are different regulatory tools, one an enforcement action, the other a legal condition of a permit.

The proposed language follows, with the text from the previous draft presented below in ~~strikeout~~. Please note that the proposed changes are based on a review by legal counsel, are non-substantive clarifications of the prior draft, and therefore will not require re-noticing of this item.

Add to end of Chapter 3, "Water Quality Objectives", of the *Water Quality Control Plan*:

~~COMPLIANCE WITH WATER QUALITY OBJECTIVES~~

~~"The Regional Water Board recognizes that immediate compliance with new, revised or newly interpreted water quality standards adopted by the Regional Water Board, the State Water Resources Control Board, or the U.S. Environmental Protection Agency, may not be feasible in all circumstances. Where the Regional Water Board determines that it is infeasible for an existing discharger, * (including existing non NPDES dischargers, that under new interpretation of law are newly required to comply immediately with effluent limitations or, where appropriate, receiving water limitations, specified to implement such standards), compliance shall be achieved in the shortest practicable period of time, taking into account the factors identified in Chapter 4 for the implementation of schedules of compliance. All schedules of compliance will be limited to the time frames set out in Chapter 4.~~

~~*"Existing discharger" means any discharger that is not a new discharger. An existing discharger generally includes an increasing discharger (i.e., an existing facility with treatment systems in place for its current discharge that is or will be expanding, upgrading, or modifying its existing permitted discharge after insert effective date of amendment).~~

~~This provision authorizes schedules of compliance for standards that are adopted, revised or newly interpreted after the effective date of this amendment (on the date approved by U.S. Environmental Protection Agency, pursuant to Federal Clean Water Act Section 303(c)(3))."~~

~~This provision applies to all applicants for schedules of compliance in any waste discharge requirements, NPDES and non NPDES.~~

Add to Chapter 4, "Implementation Plans", of the *Water Quality Control Plan* after the section titled "Waste Discharge Prohibitions":

~~SCHEDULES OF COMPLIANCE~~

~~The Regional Water Board may establish a compliance schedule in a discharger's Waste Discharge Requirements (NPDES or non NPDES) permit where: 1) the Regional Water Board determines that it is infeasible for an existing discharger, * to achieve immediate compliance with an effluent specified to implement a new, revised or newly interpreted water quality standard, whether numeric or narrative, adopted by the Regional Water Board, State Water Resources Control Board, or the U.S. Environmental Protection Agency; and where 2) a discharger previously operating under a non NPDES permit, who under new interpretation of law, is newly required to comply with NPDES permitting requirements and where the Regional Water Board determines that it is infeasible to achieve immediate compliance with a newly imposed effluent limitation.~~

~~The compliance schedule shall include a time schedule for completing specific actions (including interim effluent limits) that demonstrate reasonable progress toward attainment of the effluent limitations and, thereby, water quality standards. The schedule shall contain interim limits, a final compliance date, based on the shortest practicable~~

~~time (determined by the Regional Water Board at a public hearing after considering the factors identified below) required to achieve compliance. Compliance shall be achieved no later than five years from the date of the adoption, revision, or reinterpretation of the new objective. A permittee can apply for up to a five-year extension, but only where the conditions of the compliance schedule have been fully met, and sufficient progress toward achieving the standard has been documented. Additional time constraints and conditions may be applicable to permits subject to the Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California (Phase I of the Inland Surface Waters Plan and the Enclosed Bays and Estuaries Plan))” (CTR-SIP).~~

~~A compliance schedule in an adopted TMDL Implementation Plan is expected to be as short as practicable, and if different from the compliance schedule policy outlined in this provision, will take precedence.~~

~~To document the need for and justify the duration of any such compliance schedule, a discharger must submit the following information, at a minimum:~~

- ~~(1) A written request, and demonstration, with supporting data and analysis, that it is infeasible to achieve immediate compliance with a newly adopted, newly revised or reinterpreted effluent limitation or receiving water limitation;~~
- ~~(2) Documentation required to meet the eligibility criteria set out above;~~
- ~~(3) Documentation that diligent efforts have been made to quantify pollutant levels in the discharge and the sources of the pollutant(s) in the waste stream;~~
- ~~(4) Documentation of source control efforts currently underway or completed, including compliance with any pollution prevention programs that have been established;~~
- ~~(5) A proposed schedule for additional source control measures or waste treatment (i.e. facility upgrades);~~
- ~~(6) The highest discharge quality that can reasonably be achieved until final compliance is attained;~~
- ~~(7) A demonstration that the proposed schedule is as short as practicable, taking into account economic, technical and other relevant factors; and~~
- ~~(8) Additional information and analyses, to be determined by the Regional Water Board on a case by case basis.~~
- ~~(9) Data demonstrating current treatment facility performance, to compare against existing permit effluent limits, as necessary to determine an appropriate interim limit.~~

²⁸~~“Existing discharger” means any discharger that is not a new discharger. An existing discharger generally includes an increasing discharger (i.e., an existing facility with treatment systems in place for its current discharge that is or will be expanding, upgrading, or modifying its existing permitted discharge after insert effective date of amendment).~~

Add a new section entitled “Compliance with Water Quality Objectives” to the end of Chapter 3, “Water Quality Objectives”, of the *Water Quality Control Plan* as follows:

COMPLIANCE WITH WATER QUALITY OBJECTIVES

The Regional Water Board recognizes that immediate compliance with new effluent and/or receiving water limitations based on new, revised or newly interpreted water quality objectives or prohibitions adopted by the Regional Water Board or the State Water Resources Control Board, or with new, revised or newly interpreted water quality criteria promulgated by the U.S. Environmental Protection Agency (USEPA)¹, may not be technically and/or economically feasible² in all circumstances.

Where the RB determines that it is infeasible for an existing discharger³ to comply with effluent limitations or where appropriate, receiving water limitations, specified to implement new, revised or newly interpreted water quality objectives, criteria or prohibitions; issuance of a schedule of compliance⁴ may be appropriate.

Similarly, immediate compliance may not be technically and/or economically feasible for existing non-NPDES dischargers that, under new interpretation of law, are newly required to comply with new NPDES permitting requirements. Issuance of a schedule of compliance may be appropriate in these circumstances as well, to comply with effluent and/or receiving water limitations specified to implement objectives, criteria, or prohibitions that are adopted, revised, or reinterpreted after July 1, 1977, and that were not included in the non-NPDES permit.

Any schedule of compliance shall require achievement of the effluent limitations and/or receiving water limitations within the shortest feasible period of time, taking into account the factors identified in Chapter 4 for the implementation of

¹ New, revised, or newly interpreted water quality objectives, criteria, or prohibitions means: 1) objectives as defined in Section 13050(h) of Porter-Cologne; 2) criteria as promulgated by the USEPA; or 3) prohibitions as defined in the *Water Quality Control Plan for the North Coast Region* that are adopted, revised, or newly interpreted after the effective date of this amendment. Objectives and criteria may be narrative or numeric.

² Technical and economic feasibility shall be determined consistent with State Board Resolution No. 92-49.

³ Existing discharger as defined in the State “Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California,” (CTR-SIP) means: “any discharger (non-NPDES or NPDES) that is not a new discharger. An existing discharger generally includes an increasing discharger (i.e., an existing facility as of July 1, 1977, with treatment systems in place for its current discharge that is or will be expanding, upgrading, or modifying its existing permitted discharge after a new, revised, or newly interpreted water quality objective becomes applicable.”

⁴ Schedule of compliance: as defined in Section 502 (17) of the CWA, means: “a schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with an effluent limitation, other limitation, prohibition, or standard.”

schedules of compliance. All schedules of compliance will be limited to the time frames set out in Chapter 4.

Add a new section entitled “Schedules of Compliance” in Chapter 4, “Implementation Plans,” of the *Water Quality Control Plan* following the section titled “Waste Discharge Prohibitions” as follows:

SCHEDULES OF COMPLIANCE

The Regional Water Board may establish a Schedule of Compliance in an NPDES permit for a point source discharge, where the Regional Water Board determines that it is infeasible in the following circumstances:¹

- 1) an existing discharger² to achieve immediate compliance with effluent and/or receiving water limitations specified to implement new, revised, or newly interpreted water quality objectives, criteria, or prohibitions;*
- 2) a discharger previously operating under a non-NPDES³ permit who-- under new interpretation of law, is newly required to comply with NPDES permitting requirements-- to achieve immediate compliance with newly imposed effluent and/or receiving water limitations specified to implement objectives, criteria, or prohibitions adopted, revised, or reinterpreted after July 1, 1977, and that were not included in the non-NPDES permit; or*
- 3) a discharger who is required to comply with TMDLs adopted as a single permitting action, to achieve immediate compliance with effluent and/or receiving water limits that are specified to implement new, revised, or newly interpreted objectives, criteria, or prohibitions.*

The schedule of compliance shall include a time schedule for completing specific actions (including interim effluent limits) that demonstrate reasonable progress toward attaining the effluent and/or receiving water limitations, water quality objectives, criteria, or prohibitions. The schedule of compliance shall contain interim limits and a final compliance date based on the shortest feasible time required to achieve compliance (determined by the Regional Water Board at a public hearing after considering the factors identified below).

¹ Schedules of compliance for CTR criteria are independently authorized and governed by 40 CFR 131.38 and the State “Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California” (CTR-SIP). This amendment is intended to supplement, not supercede, these provisions required by the CTR-SIP.

² Existing discharger is defined in the State “Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California” (CTR-SIP) means: “any discharger (non-NPDES or NPDES) that is not a new discharger. An existing discharger generally includes an increasing discharger (i.e., an existing facility as of July 1, 1977, with treatment systems in place for its current discharge that is or will be expanding, upgrading, or modifying its existing permitted discharge after a new, revised, or newly interpreted water quality objective becomes available).”

³ Non-NPDES Waste Discharge Requirements (WDRs) are also independently authorized by Porter Cologne, and will continue to be adopted on a case-by-case basis.

Schedules of compliance in NPDES permits for existing point source dischargers shall be as short as feasible, but in no case exceed the following:

Up to five years from the date of permit issuance, re-issuance, or modification that establishes effluent and/or receiving water limitations specified to implement new, revised, or newly interpreted objectives, criteria, or prohibitions. A permittee can apply for up to a five year extension, but only where the conditions of the schedule of compliance have been fully met, and sufficient progress toward achieving the objectives, criteria, or prohibitions has been documented.

In no case shall a schedule of compliance for these dischargers exceed ten years from the effective date of the initial permit that established effluent and/or receiving water limitations specified to implement new, revised, or newly interpreted objectives, criteria, or prohibitions.

Schedules of compliance in new NPDES permits for existing non-NPDES permittees that under new interpretation of law are newly required to comply with NPDES permitting requirements shall be as short as feasible but in no case exceed the following:

Up to five years from the date of issuance of the NPDES permit. A permittee can apply for up to a five year extension but only where the conditions of the schedule of compliance have been fully met, and sufficient progress toward achieving the objective, criterion, or prohibition has been documented.

In no case shall a schedule of compliance for these discharges exceed ten years from the effective date of the initial NPDES permit.

TMDL-derived effluent and/or receiving water limitations that are specified to implement new, revised, or newly interpreted water quality objectives, criteria, or prohibitions that are adopted as a single permitting action.

In this scenario, schedules of compliance shall require compliance in the shortest feasible period of time, but may extend beyond ten years from the date of permit issuance.

To document the need for and justify the duration of any such schedule of compliance, a discharger must submit the following information, at a minimum. The Regional Water Board will review the information submitted to determine if a schedule of compliance is appropriate.

For an existing discharger:

- *A written request, and demonstration, with supporting data and analysis, that it is technically and/or economically infeasible⁵ to achieve immediate compliance with newly adopted, revised or newly interpreted water quality objectives, criteria, or prohibitions.*

For an existing non-NPDES discharger that, under new interpretation of law, is newly required to comply with NPDES permitting requirements:

- *A written request and demonstration with supporting data and analysis that it is technically and/or economically infeasible to achieve immediate compliance with the new NPDES permitting requirements that are specified to implement objectives, criteria, or prohibitions adopted, revised, or reinterpreted after July 1, 1977, and which were not included in the non-NPDES permit.*

For all applicants:

- *Results of diligent efforts to quantify pollutant levels in the discharge and the sources of the pollutant in the waste stream.*
- *Documentation of source control efforts currently underway or completed, including compliance with any pollution prevention programs that have been established.*
- *A proposed schedule for additional source control measures or waste treatment.*
- *The highest discharge quality that is technically and economically feasible to achieve until final compliance is attained.*
- *A demonstration that the proposed schedule of compliance is as short as technically and economically feasible.*
- *Data demonstrating current treatment facility performance to compare against existing permit effluent limits, as necessary to determine which is the more stringent interim limit to apply if a schedule of compliance is granted.*
- *Additional information and analyses, to be determined by the Regional Water Board on a case-by-case basis.*

VII. OTHER CONSIDERATIONS

1. CEQA and Economic Considerations

The Basin Planning process has been certified by the Secretary of Resources as functionally equivalent to the preparation of an Environmental Impact Report (EIR) or Negative Declaration pursuant to CEQA. In lieu of these documents, however, the Regional Water Board is required to prepare the following: the Basin Plan amendment; an Environmental Checklist that identifies potentially significant adverse environmental impacts of the Basin Plan amendment as required by California Code of Regulations, Title 23, Section 3777; and a staff report that describes the proposed amendment, reasonable alternatives, and mitigation measures to minimize any significant adverse environmental impacts identified in the Checklist. The Basin Plan

⁵ Technical and economic feasibility shall be determined consistent with State Board Order 92-49.

amendment, Environmental Checklist, and staff report together are functionally equivalent to an EIR or Negative Declaration.

Based on the Environmental Checklist (see Attachment A), staff concludes that there would be no potentially significant impacts on the environment caused by adoption of this Basin Plan amendment. This amendment allows the Regional Water Board, in future actions, to include schedules in NPDES permits for compliance with water quality objectives, criteria, or prohibitions that are new, revised or newly interpreted since the effective date of this amendment. Specifically, the proposed amendment would authorize schedules of compliance in NPDES permits for existing dischargers (NPDES permittees) for effluent limitations and/or, receiving water limitations specified to implement new, revised, or newly interpreted water quality objectives, criteria, or prohibitions. The proposed amendment would also authorize schedules of compliance in NPDES permits for existing non-NPDES permittees that under new interpretation of law are newly required to comply with NPDES permitting requirements. The provision would require that compliance be achieved in the shortest feasible period of time, with a presumptive limit of five years, and the possibility of an extension of up to five additional years. In addition, schedules of compliance would be authorized for TMDLs derived effluent and/or receiving water limitations that are specified to implement new, revised, or newly interpreted water quality objectives, criteria, or prohibitions that are adopted as a single permitting action. In this scenario, schedules of compliance shall also require compliance in the shortest feasible period of time, but may extend beyond ten years from the date of permit issuance.

Schedules of compliance would only be available where it is demonstrated that immediate compliance is infeasible. The discharger would have to make commitments and show progress toward obtaining the new limitation, while in the interim, the discharger will be required to obtain the highest water quality that can be reasonably achieved, while moving toward meeting the new limitation. Moreover, no increase in pollutant discharges would be permitted under a schedule of compliance. Therefore, adoption of this amendment would have no effect on the existing environment and would not require mitigation measures.

As already noted, CEQA analysis is a requisite part of consideration of new or revised water quality standard.¹⁰ If this Basin Plan amendment is adopted, then future CEQA analysis of a new or revised water quality standard must take into account the possible environmental effects of allowing a schedule of compliance.¹¹

¹⁰ In adopting a new or revised standard, the Regional Water Board, State Board or U.S. EPA may elect to incorporate a specific schedule of compliance that is shorter or longer than that proposed in this provision. In this case, the schedule of compliance established as part of the standard would determine the maximum length of a schedule of compliance that could be included in an NPDES permit. A discharger requesting a permit schedule of compliance for such a standard would have to document the need for and justify the length of the schedule, as discussed previously.

¹¹ It may be noted that, as a practical matter, including a schedule of compliance in a permit pursuant to the terms of the proposed amendment would not have any environmental effect. This amendment would allow a schedule of compliance only for existing discharges, would not permit any increase in discharges, would require a schedule of the shortest feasible period of time, and **only** if it is shown to be necessary, i.e., the discharger has demonstrated that it cannot comply immediately. The schedule of compliance could not authorize an increase in pollutant discharges. In these circumstances, a schedule of

Finally, the adoption of this amendment will not result in any additional financial burden for dischargers. A copy of the Economic Review, dated February 27, 2004, performed by the State Water Resources Control Board's Office of Statewide Initiatives is available from the Regional Water Board upon request.

2. Relationship of Amendment to Schedules Established in Total Maximum Daily Loads (TMDLs)

The Regional Water Board has adopted and will be considering for adoption a number of TMDLs to address water quality impairments identified on the Clean Water Act Section 303(d) list. As required by the Act, each TMDL must assure compliance with water quality objectives, criteria, or prohibitions. Each TMDL allocates the total allowable load of the problem pollutant to the affected receiving water among the various sources of the pollutant, including point and nonpoint source discharges.

Each adopted TMDL includes a plan whereby the TMDL is to be implemented. Implementation may be achieved, in part, by establishing and enforcing effluent limits in NPDES permits. The TMDL Implementation Plan commonly specifies a schedule for compliance with the TMDL. Recognizing the difficulties that may accompany achieving compliance (TMDLs are sometimes developed for water bodies with multiple impairments), TMDL implementation schedules may extend beyond ten years. A schedule of compliance in an adopted TMDL Implementation Plan is expected to be as short as feasible, and if different from the schedule of compliance policy outlined in this provision, will take precedence.

3. Relationship of Amendment to Schedules Established by the California Toxics Rule (CTR) and "Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California (Phase 1 of the Inland Surface Waters Plan and the Enclosed Bays and Estuaries Plan)"

In 2000, the U.S. Environmental Protection Agency (U.S. EPA) promulgated new criteria for toxic substances. (The criteria are delineated in the U.S. EPA's California Toxics Rule, or CTR). The rule applies only to discharges of priority toxic pollutants, with limited exceptions (40 CFR Section 131.38). The CTR includes provisions authorizing schedules of compliance of up to five years in NPDES permits held by existing dischargers. On March 2, 2000, the State Water Resources Control Board adopted a policy for implementation of the CTR criteria ("Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California (Phase 1 of the Inland Surface Waters Plan and the Enclosed Bays and Estuaries Plan)"(CTR-SIP)). This policy also includes specific authorization language needed to allow Regional Water Boards to include schedules of compliance in NPDES permits for effluent limitations and receiving water limitations established to meet CTR criteria. Specifically, the policy allows up to five years from the date of permit issuance, reissuance or modification to

compliance included either in an enforcement order or, if this amendment is approved, in an NPDES permit, would be necessary. While the regulatory approach is different, there would be no difference in environmental effect.

comply with effluent limitations, based on CTR criteria with or without a TMDL, and up to fifteen years from the effective date of the policy to develop and adopt a TMDL. The policy further specifies that in no case shall a schedule of compliance exceed, from the effective date of this policy: a) ten years to establish and comply with effluent limitations based on CTR criteria or; b) twenty years to develop and adopt a TMDL and establish and comply with wasteload allocations (WLAs)¹² derived from a TMDL for a CTR criterion. This policy has been approved by OAL; however, the schedule of compliance provisions have not yet been approved by U.S. EPA. At this time, the CTR's five-year schedule of compliance remains in effect and is part of the State policy for water quality control; therefore, the Regional Water Board will implement the CTR's schedule of compliance provisions for the CTR criteria until the CTR-SIP's schedule of compliance provisions are approved by U.S. EPA. If approved by U.S. EPA, the Regional Water Board will be consistent with and implement the CTR-SIP's schedule of compliance provisions as a duly adopted and approved policy for state water quality control.

The proposed Basin Plan amendment incorporates most of the requirements of the CTR-SIP as a foundation for all schedules of compliance, in both NPDES and non-NPDES permits, and for toxic pollutants as well as non-toxic pollutants.

VIII. RECOMMENDATION

Staff recommends that the Regional Water Board adopt Board Resolution R1-2004-0011. (See Attachment B), approving the proposed Basin Plan amendment to include language authorizing schedules of compliance for existing dischargers in 1) new, revised, or modified NPDES permits for effluent limits necessary to implement water quality objectives, criteria, or prohibitions that are adopted, revised or newly interpreted after the effective date of this Basin Plan amendment; and 2) new NPDES permits, for existing non-NPDES permits that under new interpretation of law are newly required to comply with NPDES permitting requirements.

(finalrevisedstaffreport(3-16))

¹² A waste load allocation (WLA) is the amount of a pollutant load that is allocated to a specific point source as part of the TMDL. The WLA is implemented via appropriate effluent limits in the point source discharger's permit.